

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In re:

Bky. No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

---

**NOTICE OF HEARING  
AND EXPEDITED MOTION TO APPROVE  
SETTLEMENT AGREEMENT**

---

TO: THE ENTITIES SPECIFIED IN LOCAL RULE 9013.

1. Randall L. Seaver, the Chapter 7 Trustee (the “Trustee”) in the above-captioned Bankruptcy Case, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this Motion at 10:00 a.m. on September 8, 2010, in Courtroom No. 8 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard. Under applicable rules, any objection must be in writing and must be delivered to the Trustee and the United States Trustee. Because of the expedited nature of this hearing, the Trustee will not object, as to timeliness, to any response that is delivered to the Trustee prior to the hearing. **UNLESS A RESPONSE IS TIMELY SERVED AND FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. The petition commencing this Chapter 7 case was filed on June 4, 2009. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 547, 548, 550 and 551, Fed. R. Bankr. P. 7005, 7007 and 9019(a), and Local Rule 9019-1, and is filed pursuant to Local Rules 9006-1(e), 9013-1, 9013-2 and 9013-5. The Trustee seeks approval of a Settlement Agreement between the Trustee and Cornerstone Bank (the “Bank”), Cornerstone Holding Company, Inc. (“Holding”) and Blackstone Financial LLC (“Blackstone”) (the Bank, Holding and Blackstone are collectively referred to as “Cornerstone”). The Settlement Agreement is attached hereto as Exhibit A.

6. If approved, the Settlement will resolve all claims among and between Cornerstone and the Trustee in this bankruptcy case and all claims between such parties in the following proceedings:

- a. *Randall L. Seaver v. Cornerstone Bank, et al.*, Adv. No. 10-5022 (RJK) (the “Cornerstone Adversary”);
- b. *Randall L. Seaver v. Jacob Holdings of Ventanas, LLC, at al.*, Bky. No. 09-5042 (the “Ventanas Adversary”); and
- c. *Cornerstone Bank, et al. v. Randall L. Seaver*, Case No. 09-cv-03645 (the “Appeal”).

### **BACKGROUND**

7. The Bank is a North Dakota corporation. Prior to the commencement of this bankruptcy case, the Bank made loans to various entities owned and controlled by the Debtor, Dennis E. Hecker (the “Debtor” or “Hecker”). Hecker personally guaranteed repayment of certain of the loans.

8. In Fall 2009, many of the loans were overdue, and Cornerstone sought to restructure the indebtedness and to add collateral to secure repayment of the loans. To that end,

in December 2009, Hecker and several entities he owned and controlled entered into new transactions involving, in some instances, the assumption of debt by a new Hecker entity and in all instances, the grant of additional collateral to Cornerstone. Among other things, Hecker granted to Cornerstone a blanket lien in all of his personal assets, including his interest in general intangibles and rights to payment.

## **I. THE CORNERSTONE ADVERSARY PROCEEDING**

9. Following a prior Rule 2004 examination of Cornerstone, the Trustee, on June 21, 2010, commenced the Cornerstone Adversary. In the Cornerstone Adversary, the Trustee seeks to avoid the Transfers as preferential or fraudulent under applicable provisions of the Bankruptcy Code and state law, and to recover the property transferred, including any liens or security interests, to be preserved for the benefit of the bankruptcy estate of Dennis E. Hecker. The Trustee also asserted claims for the equitable subordination and disallowance of Cornerstone's claims in the bankruptcy case.

10. In response to the Adversary Complaint filed in the Cornerstone Adversary, Cornerstone filed a Motion to Dismiss. On August 20, 2010, the bankruptcy court entered an Order denying the motion to dismiss.

11. Subsequent to entry of the Order, the parties engaged in negotiations and have reached a settlement. Based upon his investigation, the Trustee has concluded that in view of the proposed settlement with Cornerstone, continued pursuit of the claims asserted against Cornerstone in the Cornerstone Adversary would be expensive, time consuming, and would result in depletion of assets of the bankruptcy estate without guarantee of a more favorable outcome.

## **II. THE VENTANAS ADVERSARY PROCEEDING**

12. The Trustee commenced the Ventanas Adversary on September 16, 2009. The Ventanas Adversary involves competing claims to certain property held in the name of Jacob Holdings of Ventanas, LLC (“JHV”) and described as Unit 3103, Sur del Area Privativa Fase III del Paraiso, KM 19.5 Transp, San Jose del Cabo, Baja California Sur, 23400 (the "Property"), a condominium on the Sea of Cortez at the Las Ventanas Al Paraiso Resort.

13. On April 21, 2010, the court approved a settlement in the main bankruptcy case pursuant to which the parties agreed that the Property at issue in the Ventanas Adversary would be sold, with a specified amount of the net proceeds from the sale being paid to Wells Fargo Bank in satisfaction of its secured claim, and the balance of the net proceeds, if any, to be held in trust pending the resolution of the remaining parties’ claims to such proceeds.

14. The Property has been for sale and is being actively marketed, but to date, no buyer has emerged for the Property.

15. In the Ventanas Adversary, Cornerstone claims a lien and security interest in any proceeds in excess of Wells Fargo’s secured claim derived from the sale of the Property, by virtue of the debtor’s prepetition transfer to Cornerstone of Debtor’s general intangibles, including rights to payment on account of the Debtor’s equity interests in certain entities, including Jacobs Holding of Venanas, LLC. As noted above, this is one of the Transfers the Trustee seeks to avoid in the Cornerstone Adversary.

## **II. THE APPEAL**

16. Cornerstone and the Trustee are also parties to the pending Appeal. In the Appeal, Cornerstone seeks reversal of this Court’s ruling that Cornerstone’s interest in the Debtor’s general intangibles, including the Debtor’s rights to payment, do not constitute a lien on

certain proceeds from a settlement reached by the Trustee in relation to the sale of the Debtor's Brainerd Toyota dealership.

17. On August 30, 2010, the District Court entered an Order affirming this Court's earlier ruling that Cornerstone has no interest in the settlement proceeds. Cornerstone, through its counsel, has indicated that it may further appeal the District Court's Order if the Settlement Agreement is not approved.

### **THE PROPOSED SETTLEMENT**

18. Pursuant to the terms of the Settlement Agreement, Cornerstone will retain payments it has received to date on account of the sale of six (6) Mikden entities formerly owned by the Debtor, as well as prepetition payments made to the Bank in relation to a loan from the Bank to Hogrider, LLC, an entity owned by Hecker. The Trustee has further agreed to cause the Estate of Dennis E. Hecker to pay to Cornerstone the sum of \$56,124.44 within 15 days from entry of any Order approving the Settlement Agreement.

19. In exchange, Cornerstone has agreed that all prepetition liens, mortgages, security interests or other interests in property transferred to Cornerstone by the Debtor, or any entity owned or controlled by the Debtor (with the exception of Jacob Holdings of Stillwater LLC), shall be avoided and recovered by the Trustee pursuant to 11 U.S.C. §§ 547, 548 and 550 and preserved for the benefit of the estate pursuant to 11 U.S.C. § 551. This includes the security interest in general intangibles and attendant rights to payment through which Cornerstone has asserted claims to virtually all of the funds coming into the bankruptcy estate. The Trustee believes that the estate's recovery of the security interest certainly has a value substantially in excess of \$1,000,000, and the value could exceed \$2,000,000 or more.

20. Cornerstone has further agreed to assign to the Trustee all of Cornerstone's right, title and interest in five (5) judgments against various entities totaling in excess of \$6.9 million and in a pending action commenced by Cornerstone against United States Rent-A-Car, along with all of the files, loan documents and other instruments evidencing the obligations Cornerstone has sued upon.

21. Cornerstone has further agreed to forego an further appeal or other relief in relation to the Appeal and the Ruling in the Appeal, and the parties have agreed to dismiss all claims among and between them in the Ventanas Adversary and the Cornerstone Adversary.

22. Finally, Cornerstone has agreed to release any and all claims against the Trustee and the Estate of Dennis E. Hecker, and the Trustee, on behalf of the Estate of Dennis E. Hecker, has agreed to release all claims against Cornerstone.

23. The Trustee believes that the proposed Settlement Agreement is in the best interests of creditors and the bankruptcy estate.

#### **REQUEST FOR EXPEDITED APPROVAL**

24. The Trustee requests expedited approval of the Settlement Agreement. Among other things, a trial is currently set in the Ventanas Adversary for September 21, 2010, and pretrial submissions are due on or before September 14, 2010.

25. Through a separate Stipulation, the Trustee and Chrysler Financial Services Americanas, LLC, the other remaining defendant in the Ventanas Adversary, have agreed to dismissal of the Ventanas Adversary, and that any proceeds derived from the sale of the Property at issue in the Ventanas Adversary will be paid to the Trustee for the benefit of the bankruptcy estate of Dennis E. Hecker. The agreement with Chrysler is contingent upon approval of the Settlement Agreement. As Wells Fargo has settled, and the remaining defendants have been

found to be in default, approval of the Settlement Agreement with Cornerstone would result in the dismissal of the Ventanas Adversary and the termination of all attendant litigation.

26. Given the recent disposition of the Appeal, moreover, Cornerstone will be forced to make an election soon in relation to any further appeal it may wish to pursue. Under applicable rules, Cornerstone has only 14 days from the date of issuance of the Order to file its appeal. Expedited approval of the Settlement Agreement will therefore bring final closure to the Appeal and will obviate the need for any further expenditure by any party in relation to the Appeal.

27. Cornerstone's Answer in the Cornerstone Adversary will soon be due, and in the absence of a ruling on the Motion on an expedited basis, the Trustee and Cornerstone would be forced to initiate discovery in order to move that litigation forward.

28. Expedited approval of the settlement will conserve resources of the bankruptcy estate by eliminating the need for the expenditure of extensive resources of the estate that would be required to continue pursuit of the Trustee's avoidance claims against Cornerstone, as well as the need to prepare for and try the claims at issue in the Ventanas Adversary.

29. Pursuant to Local Rule 9013-2, the Trustee gives notice that he may, if necessary, testify at the hearing regarding the proposed settlement.

WHEREFORE, the Trustee requests an Order of the Court:

1. Granting the Trustee's motion for expedited hearing.
2. Granting the Trustee's motion for approval of the Settlement Agreement.

Dated: September 1, 2010

LEONARD, O'BRIEN, SPENCER, GALE &  
SAYRE, LTD.

By: /s/ James M. Jorissen  
Matthew R. Burton  
James M. Jorissen  
100 South Fifth Street  
Suite 2500  
Minneapolis, Minnesota 55402  
(612) 332-1030

ATTORNEYS FOR RANDALL L. SEAVER  
TRUSTEE



**VERIFICATION**

I, Randall L. Seaver, Trustee for the Bankruptcy Estate of Dennis E. Hecker, the moving party named in the foregoing Notice of Hearing and Expedited Motion to Approve Settlement Agreement, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on September 1, 2010

/s/ Randall L. Seaver  
Randall L. Seaver

# EXHIBIT A

## UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

---

In re:

Bky. No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

---

### SETTLEMENT AGREEMENT

---

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into among and between the following parties:

- RANDALL L. SEAVER, in his capacity as trustee for the Chapter 7 Estate of Dennis E. Hecker (the “Trustee”);
- CORNERSTONE BANK, a North Dakota state bank with a business address of 2280 45<sup>th</sup> Street South, Fargo, North Dakota 58104 (the “Bank”);
- CORNERSTONE HOLDING COMPANY, INC., a North Dakota corporation (“Holding”); and
- BLACKSTONE FINANCIAL, LLC, a North Dakota limited liability company (“Blackstone”).

The Bank, Holding and Blackstone are hereafter collectively referred to as “Cornerstone.”

### RECITALS

WHEREAS, the Trustee is the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case; and

WHEREAS, there is presently pending in the United States Bankruptcy Court for the District of Minnesota an adversary proceeding under the caption *Randall L. Seaver v. Cornerstone Bank, et al.*, Adv. No. 10-5022 (RJK) (the “Cornerstone Adversary”); and

WHEREAS, in the Cornerstone Adversary, the Trustee has asserted claims to avoid and recover certain prepetition transfers from the Debtor and entities owned or controlled by the

Debtor to Cornerstone (the “Transfers”) and for the equitable subordination or disallowance of Cornerstone’s claims herein pursuant to applicable provisions of the Bankruptcy Code and state law; and

WHEREAS, Cornerstone denies receipt of any avoidable transfers or that it otherwise engaged in wrongdoing in connection with any prepetition transfers from the Debtor or entities owned or controlled by the Debtor and further alleges the Trustee lacks standing to assert any claim with respect to a number of the Transfers; and

WHEREAS, one of the prepetition transfers from the Debtor to Cornerstone at issue in the Cornerstone Adversary involved the granting of a security interest in all of the Debtor’s general intangibles, including rights to payment; and

WHEREAS, by virtue of the security interest in Debtor’s general intangibles, Cornerstone has claimed a lien and security interest in and to the proceeds derived from a settlement related to the Trustee’s sale of the Debtor’s Brainerd Toyota dealership, which claim is currently the subject of an appeal initiated by Cornerstone and presently pending in the United States District Court for the District of Minnesota under the caption *Cornerstone Bank, et al. v. Randall L. Seaver*, Case No. 09-cv-03645 (the “Appeal”); and

WHEREAS, on or about August 30, 2010, the District Court issued its Memorandum Opinion and Order Affirming the Bankruptcy Court Order in the Appeal, and finding that Cornerstone has no entitlement to the proceeds derived from the subject settlement (the “Ruling”);

WHEREAS, by virtue of the security interest in Debtor’s general intangibles, Cornerstone has claimed a lien and security interest in and to any proceeds that may be derived from the sale of the condominium unit at issue in an adversary proceeding presently pending in

the United States Bankruptcy Court for the District of Minnesota under the caption *Seaver v. Jacob Holdings of Ventanas, LLC, at al.*, Bky. No. 09-5042 (the “Ventanas Adversary”); and

WHEREAS, the Trustee believes that continued litigation with Cornerstone in pursuit of the avoidance and recovery of the Transfers in the Cornerstone Adversary, the Appeal, and the Ventanas Adversary would be time-consuming and expensive and result in the depletion of assets of the estate with no guarantee of success; and

WHEREAS, the Trustee and Cornerstone have reached a settlement of their disputes related to the Transfers in the Cornerstone Adversary, the Appeal, and the Ventanas Adversary upon the terms set forth below; and

WHEREAS, the Trustee believes that the settlement set forth below is in the best interests of creditors and the bankruptcy estate.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the parties as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge.

#### **IT IS HEREBY AGREED:**

1. Avoidance of Transfers. Except as set forth in Paragraph 2 below, the security interest granted to Cornerstone in Debtor’s personal property, including all inventory, chattel paper, accounts, equipment and general intangibles as more fully described in that certain Commercial Security Agreement dated as of December 15, 2008, shall be avoided and recovered by the Trustee pursuant to 11 U.S.C. §§ 547, 548 and 550 and preserved for the benefit of the estate pursuant to 11 U.S.C. § 551.

2. Retention of Certain Payments. Notwithstanding the provisions of Paragraph 1, the Bank shall be entitled to retain all funds it has received to date in relation to (a) the sale of six

(6) Mikden entities, including Clearwater Retail Center, LLC, Michael Holdings of Baxter, LLC, Mikden of Oakdale, LLC, Mikden, LLC, Mikden of Minnetonka, LLC, and Mikden of Stillwater, LLC; and (2) the settlement between Bank, Hogrider Investments, LLC, and Debtor of a loan from the Bank to Hogrider Investments, LLC.

3. Relinquishment of Appeal Rights. Upon entry of an order from this Court approving this Settlement, Cornerstone agrees that it will not further appeal or take any other action to set aside or otherwise seek relief from the Ruling in the Appeal. Cornerstone hereby releases and relinquishes to the Trustee any claim Cornerstone might otherwise have to any proceeds derived from the Trustee's settlement that is the subject of the Appeal.

4. Dismissal of Claims in Adversary Proceedings. The Trustee shall cause to be dismissed all claims against Cornerstone, and Cornerstone shall cause to be dismissed all claims against the Trustee and/or the Estate of Dennis E. Hecker, which any of the parties to this Agreement asserted or could have asserted in the Cornerstone Adversary or the Ventanas Adversary.

5. Assignment of Collection Rights and Judgments. Cornerstone shall assign to the Trustee all of Cornerstone's right, title and interest in and to the following judgments and causes of action and in and to the underlying loan documents and security interests, if any:

- *Cornerstone Bank, et al. v. DEH Funding LLC*, 09-2010-CV-00241 (\$3,172,304.75 judgment entered in Cass County, North Dakota District Court on January 28, 2010).
- *Cornerstone Bank, et al. v. Snapdragon's Ventures, LLC*, 27-CV-10-10142 (\$481,126.26 judgment entered in Hennepin County, Minnesota on July 1, 2010).
- *Cornerstone Bank, et al. v. Denny Hecker & Holmers Commercial Real Estate Company*, 27-CV-10-1629 (\$200,316.71 judgment entered in Hennepin County, Minnesota on August 8, 2010).
- *Cornerstone Bank, et al. v. Denny Hecker Real Estate Company, LLC, et al.*, 27-CV-10-1775 (\$463,478.50 judgment entered in Hennepin County, Minnesota on August 2, 2010).

- *Cornerstone Bank, et al. v. Denny Hecker Real Estate Company, LLC, et al.*, 27-CV-10-1776 (\$2,365,911.65 judgment entered in Hennepin County, Minnesota on August 2, 2010).
- *Cornerstone Bank, et al. v. United States Rent-A-Car*, 27-CV-10-1338 (litigation pending).

Cornerstone agrees to execute and deliver to the Trustee loan documents, security agreements, correspondence between the parties, and pleadings filed with the court, as such documents may be necessary to effect the assignments contemplated in this Paragraph 5. Cornerstone further agrees to cooperate with the Trustee and his counsel to ensure the orderly transition and substitution of parties and counsel in any pending proceedings.

6. Payment to Cornerstone. Within 15 days of entry of an Order approving this Agreement, the Trustee shall cause the Estate of Dennis E. Hecker to pay to the Bank the sum of \$56,124.44.

7. Release and Waiver of Claims. Cornerstone hereby releases and waives all known and unknown present and future claims, counterclaims, actions, losses, damages, costs, and expenses (including attorneys' fees) against the Trustee and the Bankruptcy Estate of Dennis E. Hecker. The Trustee, for and on behalf of the Estate of Dennis E. Hecker, hereby releases and waives all known and unknown present and future claims, counterclaims, actions, losses, damages, costs, and expenses (including attorneys' fees) against Cornerstone, its predecessors, successors, and assigns along with the current and former officers, directors, board members, shareholders, members, employees, agents, representatives, parent corporations, subsidiaries and affiliates, save and except the pending claims against Richard Olson and Royal Jewelers.

8. No Admission of Fault. Cornerstone's entry into this Agreement shall not be interpreted as an admission of any fault or wrongdoing. This Agreement is entered into in compromise of disputed claims, the validity of which Cornerstone disputes.

9. Bankruptcy Court Approval. This Agreement shall be construed and interpreted under the laws of the State of Minnesota and all obligations herein are subject to and conditioned upon final approval of the United States Bankruptcy Court. This Agreement is also conditioned upon Bankruptcy Court approval of that certain Settlement Agreement between Cornerstone and Patti L. Sullivan, trustee for the Estate of Jacob Holdings of Stillwater, LLC, in *In re Jacob Holdings of Stillwater, LLC*, Bky. No. 10-44574 (Bankr. D. Minn.). If approval is not obtained by October 1, 2010, this Agreement shall become null and void. In the interim, the parties to this Agreement agree to stay and indefinitely extend all appeal deadlines and pending discovery deadlines in the Cornerstone Adversary, Appeal, and Ventanas Adversary. The parties further stipulate to indefinitely extend the time to answer the Trustee's Complaint in the Cornerstone Adversary.

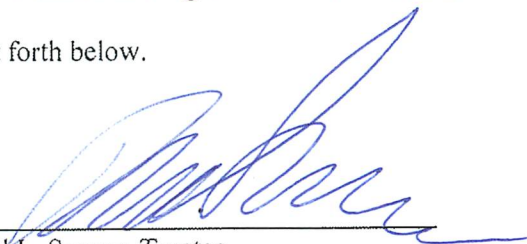
10. Further Assurances. Should any additional instruments be necessary or desirable to accomplish the purpose of this Agreement, such additional instruments will be promptly executed and delivered upon the request of the other party. The Trustee shall, immediately upon execution of this Agreement, take such actions as are necessary to obtain an order, in form and substance acceptable to the parties, approving this Agreement.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which, upon execution, shall constitute but one and the same Agreement.

12. Complete Agreement. It is specifically understood and agreed that the consideration recited herein is in full, final, and complete compromise, settlement, accord and satisfaction of disputed claims, and there are no covenants, promises, or undertakings outside of this Agreement other than as specifically set forth herein.

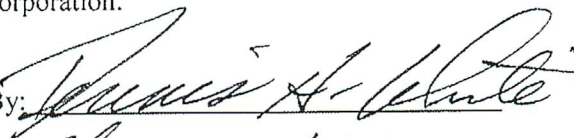
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
by their duly authorized representatives as of the date set forth below.

Dated: 9-1-10

  
Randall L. Seaver, Trustee

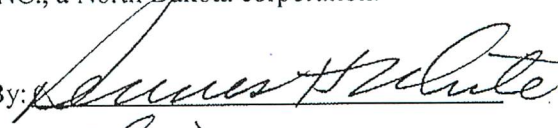
Dated: 9-1-10

CORNERSTONE BANK, a North Dakota  
corporation.

By:   
Its: Chairman/CEO

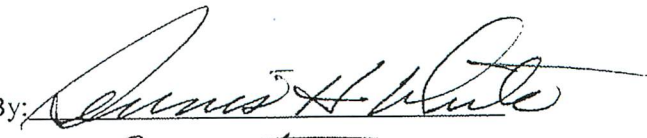
Dated: 9-1-10

CORNERSTONE HOLDING COMPANY,  
INC., a North Dakota corporation.

By:   
Its: Chairman

Dated: 9-1-10

BLACKSTONE FINANCIAL, LLC, a North  
Dakota limited liability company

By:   
Its: Agent

iManage\1284109.3-APM



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In re:

BKY No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

---

**MEMORANDUM IN SUPPORT OF EXPEDITED  
MOTION TO APPROVE SETTLEMENT**

---

**INTRODUCTION**

Randall L. Seaver, Chapter 7 Trustee for the Estate of Dennis Hecker (the “Trustee”) seeks the approval of a Settlement Agreement (the “Agreement”) with Cornerstone Bank, Cornerstone Holding Company, Inc. and Blackstone Financial, LLC (collectively “Cornerstone”)) in the above-captioned proceeding. As discussed more fully below, the Trustee believes that the compromise embodied in the proposed settlement is in the best interests of the estate. Approval of the settlement with Cornerstone will avoid litigation expense and uncertainty and, preserve assets of the bankruptcy estate and result in a significant recovery.

**STATEMENT OF FACTS**

The Trustee incorporates by reference the factual averments set forth in the accompanying verified Expedited Motion to Approve Settlement Agreement (“Motion”).

**ARGUMENT**

Federal Rule of Bankruptcy Procedure 9019(a) provides that “the Court may approve a compromise or settlement.” There are no perfect settlements, merely a range of reasonable settlements. *PW Enterprises, Inc. v. Kaler (In re Racing Services, Inc.)* 332 B.R. 581, 586 (8th Cir. BAP 2005). If the proposed settlement falls within the range of reasonable settlements, it

may be approved by the Court. *Id.* The Court may approve the settlement, even over objections, if it is found to be in the best interest of the estate as a whole. *La'Teacha Tigue v. Sosne (In re La'Teacha Tigue)*, 363 B.R. 67, 72 (8th Cir. BAP 2007) (citing *Lambert v. Flight Transp. Corp. (In re Flight Transp. Corp. Sec. Litig.)*, 730 F.2d 1128, 1135 (8th Cir. 1984)).

In determining whether the settlement is in the best interest of the estate:

[T]he Court must consider: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; 4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*Id.* Application of these factors demonstrates that the settlement should be approved.

#### **I. Probability of Success in the Litigation**

The proposed Settlement Agreement will resolve two adversary proceedings and a separate appeal, all of which involve Cornerstone's claim – based on a security interest in the Debtor's general intangibles – of entitlement to all funds collected or which will be collected on account of settlements or the disposition of property of the estate. Cornerstone has clearly manifested its intent to vigorously contest the Trustee's avoidance action through the filing of a motion to dismiss and related actions. While the Trustee believes that he will ultimately prevail in the avoidance action against Cornerstone, that outcome cannot be guaranteed, and fees and expenses of litigation will no doubt be high.

#### **II. Difficulties of Collection**

To the best of the Trustee's knowledge, the Bank is a solvent financial institution. It therefore appears that collection would likely not be an issue if the Trustee were to prevail on his avoidance and recovery claims. What is clear, however, is that getting to the collection stage will involve substantial expenditure of time and resources through trial and perhaps multiple

levels of appeal. Anticipated difficulties attendant to obtaining, defending and someday executing upon a judgment are thus not insignificant.

### **III. Complexity of the litigation**

Litigation involving the disputes framed in the Trustee's avoidance action against Cornerstone will unquestionably be complex. The Trustee's adversary complaint in the avoidance action contains 173 numbered paragraphs and eight separate counts. Certain of the Trustee's theories related to the avoidance of liens granted to Cornerstone, moreover, are predicated upon a finding that Cornerstone is an insider of the Debtor. Such claims are, by their very nature, fact intensive, and their resolution will involve a substantial amount of discovery. The complexity of the pending litigation between the parties quite clearly weighs in favor of approval of the Settlement Agreement.

### **IV. Interests of the creditors**

It is equally clear that the interests of creditors are best served by the settlement. Through the settlement, the Trustee expects to obtain a substantial return for the estate while eliminating the expense and risk inherent in continued litigation with Cornerstone. Notably, the Trustee anticipates that the benefit to the estate derived from the avoidance and recovery of Cornerstone's lien on general intangibles will be in excess of \$1 million and could well be in excess of \$2 million.

The court in *In re Hanson Industries, Inc.* recognized the prudence of settlement as an alternative to complex and expensive litigation. 88 B.R. 942 (D.Minn. 1988). In *Hanson*, the court held that, without the settlement, the creditors would "take a gamble on a piece of litigation which would likely drag on in the future and which could drain the estate of any assets it might

otherwise have for distribution. Settling for less than one might like is often the best answer to resolve what has become a ‘can of worms.’” *Id.* at 950.

The Settlement Agreement in this case will resolve three pending proceedings involving Cornerstone. It will eliminate any future claims by Cornerstone against the estate. It will provide more than \$1 million in positive recoveries and possibly much more. In sum, approval of the Settlement Agreement is in the best interests of the estate and its creditors, and this Court can and should approve the Settlement Agreement.

### **CONCLUSION**

The Trustee believes the settlement is in the best interest of the estate. While the Trustee believes there is a good probability of success on claims against Cornerstone, that outcome is by no means a certainty. Proving up those claims, moreover, would be complex and extremely expensive, reducing the overall return to the estate. Inherent in pursuing the Cornerstone claims to their conclusion is the risk that the claims fail and the estate will have expended significant sums with no gain. The settlement will bring in funds to the estate and eliminates risk *vis a vis* Cornerstone. The Trustee is charged with maximizing the return for the estate. This settlement preserves assets of the estate while simultaneously generating significant revenue for the estate. The Trustee, therefore, respectfully requests that the Settlement Agreement with Cornerstone be approved.

Dated: September 1, 2010

LEONARD, O'BRIEN, SPENCER, GALE &  
SAYRE, LTD.

By:           /e/ *James M. Jorissen*          

Matthew R. Burton

James M. Jorissen

100 South Fifth Street

Suite 2500

Minneapolis, Minnesota 55402

(612) 332-1030

ATTORNEYS FOR RANDALL L. SEAVER  
TRUSTEE

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In re:

BKY No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

---

**UNSWORN CERTIFICATE OF SERVICE**

I hereby certify that on September 1, 2010, I caused the following documents:

***Notice of Hearing and Expedited Motion to Approve Settlement Agreement;  
Memorandum in Support of Expedited Motion to Approve Settlement; and  
Proposed Order***

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice pursuant to Local Rule 9006-1(a).

I further certify that I caused a copy of the foregoing documents to be mailed by first class mail, postage paid, to the following:

**SEE ATTACHED SERVICE LIST**

Dated: September 1, 2010

/e/ Valerie Rittenbach

---

Valerie Rittenbach  
100 South Fifth Street, Suite 2500  
Minneapolis, MN 55402  
(612) 332-1030

UNITED STATES RENT A CAR  
4744 PARADISE ROAD  
LAS VEGAS,, NV 89121

ACE INSURANCE COMPANY  
P.O. BOX 294836  
CLEVELAND OH 44101

ALDRIDGE, DAN  
1600 KENWOOD PKWY.  
MINNEAPOLIS MN 55405

ALLEN EIDE  
3221 32ND AVENUE SOUTH  
SUITE 900  
GRAND FORKS ND 58201

AMERICAN BANK  
1060 DAKOTA DRIVE  
MENDOTA HEIGHTS MN 55120

AMERICAN EXPRESS  
P. O. BOX 0001  
LOS ANGELES CA 90096

AMERICAN NAT'L BANK OF MN  
7638 WOIDA RD  
BAXTER MN 56425

ANCHOR BANK  
1570 CONCORDIA AVE  
SAINT PAUL MN 55104

ANCHOR BANK  
P.O. BOX 7933  
MADISON WI 53707

AV CARD/OASIS  
164 LAKE FRONT DR  
COCKEYSVILLE MD 21030

AXIS CAPITAL, INC.  
308 N LOCUST ST  
PO BOX 2555  
GRAND ISLAND NE 68802

AXLE CAPITAL, LLC / SAGECREST  
3 PICKWICK PLAZA  
GREENWICH CT 06830

AMERICAN BANK  
1578 UNIVERSITY AVENUE W  
SAINT PAUL, MN 55104

AMERICAN EXPRESS BANK FSB  
C/O BECKET AND LEE LLP  
PO BOX 3001  
MALVERN PA 19355-0701

BARBARA LYNN CUTTER  
7001 W. CHARLESTON BLVD.,  
#1088  
LAS VEGAS, NV 89117

BAYPORT MARINA ASSOCIATION  
200 5TH STREET  
BAYPORT MN 55003

BELISLE, WAYNE  
1843 EAGLE RIDGE DR  
SAINT PAUL MN 55118

BELLAGIO  
3600 LAS VEGAS BLVD  
LAS VEGAS NV 89109

BREICH, WALTER  
13670 -- 122ND STREET  
NORWOOD YOUNG AMERICA MN  
55368

BREMER BANK  
633 SOUTH CONCORD STREET,  
SUITE 350  
SOUTH ST. PAUL MN 55075

BRIGGS & MORGAN PA  
2200 IDS CENTER  
80 SOUTH EIGHTH STREET  
MINNEAPOLIS MN 55402

C AND C BOAT WORKS  
36448 CTY RD 66  
CROSSLAKE MN 56442

CA BOARD OF EQUALIZATION  
PO BOX 942879  
SACRAMENTO CA 94279-7072

CA DEPT OF MOTOR VEHICLES  
PO BOX 942869  
SACRAMENTO CA 94269-0001

CARLTON FINANCIAL  
CORPORATION  
1907 E. WAYZATA BLVD. SUITE 180  
WAYZATA MN 55391

CENTER POINT ENERGY  
P.O. BOX 1144  
MINNEAPOLIS MN 55440

CESSNA AIRCRAFT COMPANY  
P.O. BOX 12270  
WICHITA KS 67277

CHRYSLER FINANCIAL  
CIMS 740-01-19  
6400 S FIDDLERS GREEN CIR.,  
STE. 700  
ENGLEWOOD CO 80111-4979

CITY OF ASPEN  
130 S. GALENA ST.  
ASPEN CO 81611

CITY OF BAYPORT  
294 N. 3RD STREET  
BAYPORT MN 55003

CITY OF MEDINA  
2052 CO RD 24  
HAMEL MN 55340

COMMUNITY NATIONAL BANK  
845 EAST COUNTY ROAD E  
VADNAIS HEIGHTS MN 55127

D&H DOCKS  
23624 SMILEY ROAD  
NISSWA, MN 56468

COOPERATIVE POWER  
P.O. BOX 69  
TWO HARBORS MN 55616

CORNERSTONE BANK  
2280 45<sup>TH</sup> STREET SOUTH  
FARGO, ND 58104

CROSSLAKE PROPERTY  
SOLUTIONS  
P.O. BOX 810  
CROSSLAKE MN 56442

CROW WING COUNTY  
TREASURER  
JUDICIAL CENTER  
213 LAUREL ST  
BRainerd MN 56401

DEERWOOD BANK  
611 WASHINGTON STREET NE  
BRainerd MN 56401-3377

DON GILBERT  
1700 PHEASANT RUN  
HUDSON WI 54016

DONALD M HALSTEAD III  
15626 SUNSET WAY  
BRainerd MN 56401

ELIZABETH A JOHNSON  
PO BOX 624  
PINE RIVER MN 56474

ENCORE BANK  
3003 TAMiami TRAIL NORTH, #100  
NAPLES FL 34103

EXXONMOBILE OIL  
CORPORATION  
ATTN JENNIFER FRASER  
120 MCDONALD STREET SUITE B  
SAINT JOHN NB CANADA E2J 1M5

FAMILY HOLDINGS OF MN LLC  
11614 ECHO BAY DRIVE  
CROSSLAKE MN 56442

FIFTH THIRD BANK  
C/O RICHARD J. SWIFT, JR.  
GARLICK STETLER & SKRIVIAN  
9115 CORSEA DE FONTANA WAY,  
#100  
NAPLES FL 34109

GE CAPITAL  
1415 WEST 22ND STREET, SUITE  
600  
OAKBROOK IL 60523

GE CAPITAL, FLEET SERVICES  
3 CAPITAL DRIVE  
EDEN PRAIRIE MN 55344

GELCO CORPORATION  
THREE CAPITAL DRIVE  
ATTN: GENERAL COUNSEL  
EDEN PRAIRIE MN 55344

GEMB LENDING INC  
2995 RED HILL AVE STE 250  
COSTA MESA CA 92626

GEMB LENDING, INC.  
P.O. BOX 57091  
IRVINE CA 92619

GMAC MORTGAGE  
1100 VIRGINIA DRIVE  
FORT WASHINGTON, PA 19034

GMAC MORTGAGE  
P.O. BOX 4622  
WATERLOO IA 50704

GMAC, LLC  
15303 94TH AVENUE  
ORLAND PARK IL 60462

GWYN M DOENZ  
10600 COUNTRY DRIVE  
PINE CITY MN 55063

HECKER, SANDRA  
13755 - 84TH PL N  
MAPLE GROVE MN 55369

HENNEPIN COUNTY TREASURER  
300 S SIXTH ST  
A600 GOVERNMENT CNT  
MINNEAPOLIS MN 55487

HOLY CROSS ENERGY  
3799 HWY 82  
GLENWOOD SPRINGS CO 81602

HOME FEDERAL SAVINGS BANK  
1016 CIVIC CENTER DR NW  
STE 300  
ROCHESTER MN 55903

HSBC BANK NEVADA NA  
BASS & ASSOCIATES, PC  
3936 E FT LOWELL RD, STE 200  
TUCSON AZ 85712

HYUNDAI MOTOR AMERICA  
10550 TALBERT AVE  
MOUNTAIN VALLEY CA 92708



INTER BANK  
P.O. BOX 986  
NEWARK NJ 07184

IRS  
DEPARTMENT OF TREASURY  
OGDEN UT 84201

JASON S. COLBAUGH  
PO BOX 1220  
BRainerd MN 56401

JC BROMAC  
11860 S. LA CIENEGA BLVD.  
LOS ANGELES CA 90250

KAPLAN STRANGIS & KAPLAN PA  
5500 WELLS FARGO CENTER  
90 SOUTH 7TH STREET  
MINNEAPOLIS MN 55402

KSTP-FM LLC  
3415 UNIVERSITY AVE  
SAINT PAUL MN 55114

LUBIC, MICHAEL, ESQ.  
601 S FIGUEROA ST  
STE 2500  
LOS ANGELES CA 90017-5704

MARC D. KOHL  
39101 DARLING LANE  
HINCKLEY MN 55037

MARSHALL BANK FIRST  
225 SOUTH SIXTH STREET, SUITE  
2900  
MINNEAPOLIS MN 55402

MIKDEN PROPERTIES  
7002 6TH STREET NORTH  
OAKDALE MN 55128

INTERBANK EDINA  
3400 WEST 66TH STREET, SUITE  
100  
EDINA MN 55435

JACOB HOLDINGS OF MEDINA,  
LLC  
500 FORD RD  
MINNEAPOLIS MN 55426

JAVAN CARL  
13942 GRAND OAKS DR  
BAXTER MN 56425

JOHN J. SORCI TRUST  
2300 EAST VALLEY COURT  
SAN JOSE CA 95148

KELLY K. HECKER  
13905 - 53RD AVE N. APT. 1  
PLYMOUTH MN 55446

LAKE BANK, N.A., THE  
613 FIRST AVENUE  
TWO HARBORS MN 55616

M&I BANK  
770 N. WATER STREET  
MILWAUKEE WI 53202

MARC E TRESSLER  
3400 BARBARA LN  
BURNSVILLE MN 55337

MCENROE, CATHERINE  
LEONARD STREET & DEINARD  
150 S FIFTH ST STE 2300  
MINNEAPOLIS MN 55402

MINNESOTA DEPT. OF REVENUE  
MAIL STATION 7701  
SAINT PAUL MN 55146-7701

INTERNAL REVENUE SERVICE  
SPECIAL PROCEDURES BRANCH  
389 US COURTHOUSE 316 N  
ROBERT  
ST. PAUL MN 55101

JACOB PROPERTIES OF ASPEN,  
LLC  
500 FORD RD  
MINNEAPOLIS MN 55426

JAVIER ESQUIVEL  
2807 W AVE 30  
LOS ANGELES CA 90065

JP MORGAN CHASE BANK, N.A.  
726 MADISON AVENUE  
NEW YORK NY 10021

KLEINBANK  
14141 GLENDALE ROAD  
SAVAGE MN 55378

LLOYD SECURITY  
1097 10TH SE  
MINNEAPOLIS MN 55414

MAC OF PINE CITY, LLC  
3221 32ND AVENUE SOUTH  
SUITE 900  
GRAND FORKS ND 58201

MARSH CONSUMER  
333 SOUTH SEVENTH, STE 1600  
MINNEAPOLIS MN 55402-2427

MICHAEL REYES  
PO BOX 205  
BACKUS MN 56435

MINNESOTA DEPT. OF REVENUE  
PO BOX 64649  
SAINT PAUL MN 55164-0649

MN DEPT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES  
445 MINNESOTA ST  
SAINT PAUL MN 55101-5160

NATHAN THIEMAN  
1030 8TH AVE SW  
PINE CITY MN 55063

NEIMAN MARCUS  
P.O. BOX 5235  
CAROL STREAM IL 60197

NEVADA STATE BANK  
6505 NORTH BUFFALO DRIVE  
LAS VEGAS NV 89131

NIEDERNHOEFER, MANFRED  
1563 RIVERCREST RD  
LAKELAND MN 55043

NITROGREEN  
P.O. BOX 41  
MAPLE PLAINE MN 55359

NORTHMARQ CAPITAL  
3500 AMERICAN BLVD WEST,  
SUITE 500  
BLOOMINGTON MN 55431

NORTHRIDGE FARM  
ASSOCIATION  
P.O. BOX 767  
WAYZATA MN 55391

NORTHWOODS BANK  
PO BOX 112  
PARK RAPIDS MN 56470

OLD REPUBLIC SURETY  
1503 - 42ND ST  
STE 100  
DES MOINES IA 50305

PRALLE, GARY  
3625 PINE HOLLOW PL  
STILLWATER MN 55082

PREMIER AQUARIUM  
6340 IRVING AVE S.  
RICHFIELD MN 55423

PREMIER BANKS  
1875 W. HIGHWAY 36  
ROSEVILLE MN 55113

PRESS A DENT INC  
1154 S HIGH ST  
DENVER CO 80210

PRINDLE, DECKER & AMARO, LLP  
310 GOLDR SHORE - 4TH FLOOR  
LONG BEACH CA 90802

PROFESSIONAL SERVICE  
BUREAU  
11110 INDUSTRIAL CIRCLE NW  
STE B  
ELK RIVER MN 55330-0331

MICHAEL W. MALTER  
BINDER & MALTER LLP  
2775 PARK AVENUE  
SANTA CLARA, CA 95050

R. OLSON / WATERFORD  
PROPERTIES  
73 N. BROADWAY  
FARGO ND 58102

RANDY'S SANITATION  
P.O. BOX 169  
DELANO MN 55328

RIVERLAND BANCORPORATION  
700 SEVILLE DRIVE  
JORDAN MN 55352

RIVERWOOD BANK  
LOAN PRODUCTION OFFICE  
PO BOX 899  
CROSSLAKE MN 56442

ROE, JESSICA LIPSKY, ESQ.  
BERNICK LIFSON ET AL  
500 WAYZATA BLVD STE 1200  
MINNEAPOLIS MN 55416

ROYAL JEWELERS  
73 BROADWAY  
FARGO, ND 58102

RUTH ANN BIEDERMAN  
414 7TH AVE NE  
PINE CITY MN 55063

SCHUYLER SCARBOROUGH  
19181 SPENCER ROAD UNIT #15  
BRAINERD MN 56401

SCOTT A. KEYPORT  
1802 AIRWAVES RD NE  
PINE CITY MN 55063

SILVER CLIFF ASSOCIATION  
1201 CEDAR LAKE RD S.  
MINNEAPOLIS MN 55416

SOURCE GAS  
P.O. BOX 660474  
DALLAS TX 75266

ST. CROIX YACHT CLUB  
P.O. BOX 2263  
STILLWATER MN 55082

STATE OF MINNESOTA DEPT OF  
REVENUE  
600 NORTH ROBERT STREET  
ST. PAUL MN 55101

STORCHECK CLEANERS  
857 7TH STREET  
ST. PAUL MN 55106

SUMMERS PROPERTY  
MANAGEMENT  
111K AABC  
ASPEN CO 81611

TCF NATIONAL BANK  
801 MARQUETTE AVENUE  
MINNEAPOLIS MN 55402

TCHIDA, BRYANT D., ESQ.  
LEONARD STREET & DEINARD  
150 S 5TH ST STE 2300  
MINNEAPOLIS MN 55402

THE MIRAGE CASINO-HOTEL  
C/O MARK W. RUSSELL ESQ  
3400 LAS VEGAS BLVD S  
LAS VEGAS NV 89109

TOYOTA FINANCIAL SAVINGS  
BANK  
2485 VILLAGE VIEW DRIVE  
SUITE 200  
HENDERSON NV 89074

TOYOTA FINANCIAL SERVICES  
301 CARLSON PKWY, STE. 210  
MINNETONKA MN 55305

TOYOTA MOTOR CREDIT CORP  
301 CARLSON PKWY STE 210  
MINNETONKA MN 55305

U.S. BANK  
BC-MN-H22A  
800 NICOLLET MALL, 22ND  
FLOOR  
MINNEAPOLIS MN 55402

US BANK VISA CARD  
P.O. BOX 790408  
ST. LOUIS MO 63179

VENTURE BANK  
5601 GREEN VALLEY DRIVE  
SUITE 120  
BLOOMINGTON MN 55437

VFS FINANCING, INC.  
10 RIVERVIEW DR  
ATTN BETH BONELL  
DANBURY CT 06810

VICTORIA INSURANCE  
1100 LOCUST STREET  
DES MOINES IA 50391

VISION BANK  
3000 25TH ST. SOUTH  
P.O. BOX 10008  
FARGO ND 58106

WAGENER, MAURICE J.  
13700 WAYZATA BLVD  
HOPKINS MN 55305

WASHINGTON COUNTY  
TREASURER  
GOVERNMENT CENTER  
14949 - 62ND ST N  
STILLWATER MN 55082

WASHINGTON MUTUAL BANK,  
FA  
400 E MAIN ST  
STOCKTON CA 95290

WASTE PARTNERS  
P.O. BOX 677  
PINE RIVER MN 56474-0677

WATERFORD ASSOCIATION  
P.O. BOX 1353  
MINNEAPOLIS MN 55480-1353

WAYNE BELISLE  
1843 EAGLE RIDGE  
MENDOTA HEIGHTS MN 55118

WELLS FARGO  
C/O DAVID GALLE  
45 SOUTH SEVENTH ST, STE 3300  
MINNEAPOLIS MN 55402

WELLS FARGO BANK N.A.  
LOAN ADJUSTMENT GROUP  
90 SOUTH 7TH STREET  
MINNEAPOLIS MN 55402

WELLS FEDERAL BANK  
53 FIRST ST. SW  
WELLS MN 56097

WI DEPT OF TRANSPORTATION  
PO BOX 7949  
MADISON WI 53707

WILLIAM BRODY  
BUCHALTERNEMER  
1000 WILSHIRE BLVD, STE 1500  
LOS ANGELES CA 90017-2457

WORLD OMNI FINANCIAL CORP.  
190 JIM MORAN BOULEVARD  
DEERFIELD BEACH FL 33442

ZAPPIA, THOMAS M., ESQ.  
ZAPPIA & LEVAHN  
941 HILLWIND RD NE STE 301  
MINNEAPOLIS MN 55432

CRAIG E REIMER  
MAYER BROWN LLP  
71 SOUTH WACKER DRIVE  
CHICAGO, IL 60606

DENNIS E. HECKER  
1615 NORTHRIDGE DRIVE  
MEDINA, MN 55391

HOWARD J ROIN  
MAYER BROWN LLP  
71 SOUTH WACKER DRIVE  
CHICAGO, IL 60606

MARIA ROMANO  
4744 PARADISE ROAD  
LAS VEGAS, NV 89121

SAJIDA MAHDI ALI  
MAYER BROWN LLP  
71 SOUTH WACKER DRIVE  
CHICAGO, IL 60606

STUART ROZEN  
MAYER BROWN LLP  
71 SOUTH WACKER DRIVE  
CHICAGO, IL 60606

MICHAEL B. LUBIC  
SONNENSCHN NATH &  
ROSENTHAL LLP  
10100 SANTA MONICA BLVD, 7<sup>TH</sup> FL.  
LOS ANGELES, CA 90067

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In re:

BKY No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

---

**ORDER**

---

This case is before the court on the motion of Randall L. Seaver, trustee seeking an order authorizing approval of a settlement agreement with Cornerstone Bank, Cornerstone Holding Company, Inc. and Blackstone Financial, LLC (collectively “Cornerstone”).

Based on the motion and the files and records,

IT IS ORDERED:

1. The trustee’s motion for approval of the settlement agreement is granted.

Dated: \_\_\_\_\_

---

Robert J. Kressel  
United States Bankruptcy Judge